STATEMENT OF CONSIDERATION RELATING TO
907 KAR 15:070

Department for Medicaid Services
Amended After Comments

(1) A public hearing regarding 907 KAR 15:070 was not requested and; therefore, not held.

(2) The following individuals submitted written comments regarding 907 KAR 15:070:

Name and Title	Organization/Agency/Other Entity
Kathy Adams, Director of Public Policy	The Children's Alliance
Nancy Galvagni, Senior Vice President	Kentucky Hospital Association
Chris M. Hoffman, COO	Highlands Regional Medical Center
Sharon D. Perkins, Director of Health Policy	Kentucky Hospital Association

3) The following individual from the promulgating agency responded to comments received regarding 907 KAR 3:005:

Name and Title	Organization/Agency/Other Entity
Stuart Owen, Regulation Coordinator	Department for Medicaid Services

SUMMARY OF COMMENTS AND AGENCY'S RESPONSES

(1) Subject: Limit of Beds

(a) Comment: Kathy Adams, Director of Public Policy, The Children's Alliance, stated:

"Section 2(1)(j) –(k) limits RCSUs to 16 beds and doesn't allow a RCSU to be part of multiple units comprising 1 facility. While we are aware of the long time "Institute for Mental Disease (IMD)" exclusion, the Children's Alliance strongly opposes the continuation of this antiquated requirement, which is detrimental in allowing individuals with mental health disorders to receive high quality, cost-effective residential treatment services. The IMD exclusion will greatly limit current providers that provide children's residential treatment services from being able to provide RSCU services, especially on the same campus."

(b) Response: The requirement is a federal requirement imposed on Medicaid programs and the Centers for Medicare and Medicaid Services (CMS) will not provide

federal funding for services that violate the federal requirement. The Department for Medicaid Services (DMS) is clarifying via an “amended after comments” administrative regulation that the limit does not apply if all recipients in a residential crisis stabilization unit (RCSU) are under twenty-one (21) years of age or over age sixty-five (65.)

(2) Subject: Separate Children from Adults

(a) Comment: Kathy Adams, Director of Public Policy, The Children’s Alliance, stated:

“There are concerns that neither 902 KAR 15:440E or 907 KAR 15:070 require that children be kept separate from adults or any requirements related to the separation of male and female clients.

(b) Response: The concern is addressed by the Office of Inspector General’s administrative regulation which establishes licensure requirements for RCSUs - 902 KAR 20:440. To enroll in the Medicaid Program an RCSU is required to first obtain an RCSU license from the Office of Inspector General (OIG) and comply with the licensure requirements. Section 10(4) of the OIG administrative regulation requires the following:

“(4) If a crisis stabilization program serves adults with a severe mental illness or substance use disorder and children with severe emotional disabilities:
(a) The programs shall not be located on the same campus; and
(b) The children’s program shall serve clients:
1. Under the age of eighteen (18); or
2. Up to the age of twenty-one (21) if developmentally appropriate for the client.”

(3) Subject: Third party contracts

(a) Comment: Kathy Adams, Director of Public Policy, The Children’s Alliance, stated:

“Page 15, line 17 (3)(b) Should third party contract be defined in 907 KAR 15:005? Does this prohibit a RCSU from contracting with qualified practitioners to provide services? Or does a RCSU have to “employ” all the practitioners used in service provision?”

(b) Response: The requirement does not prohibit an RCSU from contracting with practitioners to provide services, but rather it establishes that the Department for Medicaid Services won’t pay for the contractual arrangement/terms (such as contractor’s salary and benefits). As required by federal regulation, the Medicaid program pays for services rendered to Medicaid recipients. A contract between an entity and practitioner is not a covered service; therefore, no federal funding is allowed to cover the contractual terms/arrangement. DMS will pay for Medicaid-covered services rendered by the practitioner but will not pay for the contractual arrangement/terms between the entity and the practitioner.

(4) Subject: Crisis Stabilization in Hospitals

(a) Comment: Nancy Galvagni, Senior VP, Kentucky Hospital Association stated:

"On behalf of all hospitals in the state, we ask that (h) of Section 2 of this rule be deleted in it's entirety. As written, this provision prohibits crisis stabilization units from being part of a hospital. This should be deleted because hospitals are often in the best position to provide these services, as they have access to a full array of behavioral healthcare professionals and board certified psychiatrists. At a time when the cabinet is desiring to expand the number of Medicaid behavioral health providers, it makes no sense to exclude hospitals which are capable of meeting the requirements of the regulation and offering the broadest array of services. For these reasons, (h) should be deleted."

Chris M. Hoffman, COO, Highlands Regional Medical Center stated:

"As an acute care community hospital, Highlands has concern over being excluded from providing services to patients that need certain crisis stabilization. We have concerns that the language is not clear regarding patients who need inpatient psychiatric hospitalization versus patients who need crisis stabilization or patients who require acute withdrawal stabilization. Acute withdrawal from alcohol or drugs such as benzodiazepines and some other drugs may require medical stabilization involving specific nutritional, pharmaceutical, diagnostic and medical care services. These services are not usually available in a residential program, and could increase the risk of further morbidity and/or mortality. Patients that do not receive the appropriate medical stabilization care may end up needing very complex and expensive care (such as intubation, critical nursing care, etc.) so it does not make sense to limit hospitals ability to treat these patients. Highlands strongly objects to the language in Section 2. (h) which states crisis stabilization shall **NOT be part of the hospital.** Highlands feels that this language could prohibit hospitals from providing the needed medical care for acute withdrawal."

Sharon D. Perkins, Director Health Policy, Kentucky Hospital Association stated:

"KHA strongly objects to Section 2. (h) which states that crisis stabilization shall not be part of the hospital. This section serves to discriminate against hospitals. A hospital may be in a better position than any other facility to provide the service due to having staff and administrative support in place to administer the functions of Crisis stabilization. As long as the services being provided are in an appropriate manner and setting, it should not matter whether crisis stabilization is part of a hospital. The purpose of Crisis stabilization is to assist the individual and also maintain the individual at a lower level of care. If hospitals can meet the staffing and service requirements, they should be allowed to provide crisis stabilization since this would increase access to care.

Crisis stabilization is a community service to help the psychiatric patient avoid hospitalization. However, there are times that hospitalization is necessary. This is recognized in 907 KAR 15:070 Section 2. g 2 Stabilize an individual and provide

treatment for acute withdrawal, if applicable. Acute withdrawal from alcohol and or benzodiazepines along with barbiturates requires medical supervision and usually titrated medication. This should not be attempted outside the confines of a medical facility, such as a hospital if 24 hour supervision is required or a clinic if, detoxification can take place outpatient."

(b) Response: RCSUs provide community-based stabilization services in residential settings. Residential crisis stabilization unit services are intended to be residential in nature or home-like. Efforts to serve individuals in a community setting and in the least restrictive setting help promote and sustain long term recovery. The residential setting is a therapeutic component of the care model in contrast to an inpatient/hospital setting.

RCSUs serve as an alternative to inpatient hospital care and are not intended to provide the level of medical care of an inpatient hospital or acute care inpatient hospital with a psychiatric distinct part unit. If an individual's condition necessitates that the person be admitted to an inpatient hospital then an RCSU (or other provider) can facilitate transferring the individual to a hospital.

Additionally, the Centers for Medicare and Medicaid Services (CMS) – which provides federal funding to DMS for RCSU services and approved the corresponding state plan amendment (after much review) wants a clear distinction between inpatient care and residential care.

(5) Subject: Delete Medical Detoxification

(a) Comment: Chris M. Hoffman, COO, Highlands Regional Medical Center stated:

"Further, the provisions of Section 3. (4) (a) (b) allow medical detoxification in crisis stabilization units outside of acute care hospitals. We recommend this be deleted. Please consider the safety and efficacy of providing medical services in the correct setting. As propose, we feel the regulation is not clear as to what indicates a "crisis stabilization" versus medical stabilization for acute withdrawal, and hospitalization for acute inpatient psychiatric conditions."

Sharon D. Perkins, Director Health Policy, Kentucky Hospital Association stated:

"The provision of **Section 3. (4) (a) (b)** which allow crisis stabilization units to provide medical detoxification should be deleted, **Crisis stabilization should not be combined with detoxification services**. Detoxification is an acute care service which requires constant medical supervision along with nursing attention and attention to physical well-being that is not appropriate for Crisis Stabilization unit. Detoxification is a specialty service and could be referral source of the Crisis Stabilization unit. Federal confidentiality standards differ between psychiatric patients and detoxification/drug rehabilitation patients. These confidentiality guidelines will be violated by mixing these two groups of clients. Although a percentage of detoxification clients have co-occurring psychiatric disorders, because of their compromised physical condition, they may have

difficulty in the Milieu with those suffering from psychiatric crisis and vice versa."

(b) Response: Via an "amended after comments" administrative regulation DMS is removing Section 3(4) as requested.

(6) Subject: RCSU Services Criteria

(a) Comment: Sharon D. Perkins, Director Health Policy, Kentucky Hospital Association stated:

"Section 2. (i) 1. This sentence should be amended to read "Is experiencing a behavior health crisis that cannot be safely accommodated within the individual community; by adding, "and does not require 24 hour nursing supervision for safety" because crisis stabilization is not an appropriate substitute when an individual qualifies for hospital care."

(b) Response: DMS agrees that crisis stabilization is not appropriate for an individual who qualifies for hospital care and notes that the provision following Section 2(1)(i) addresses this. The entire excerpt (which addresses residential crisis unit stabilization eligibility criteria) reads as follows:

"(i) Be used when an individual:
1. Is experiencing a behavioral health crisis that cannot be safely accommodated within the individual's community; and
2. Needs overnight care that is not hospitalization;".

DMS believes the language is appropriate as is.

(7) Subject: Distinction Between Those that Need Acute Inpatient Psychiatric Hospitalization Versus Those Who Need Crisis Stabilization

(a) Comment: Sharon D. Perkins, Director Health Policy, Kentucky Hospital Association stated:

"The distinction between those need acute inpatient psychiatric hospitalization versus those who need Crisis Stabilization should be articulated in this language, it should be clear that if a person meet inpatient hospital criteria, they are not appropriate for crisis stabilization. It is not clear as to what criterion indicates Crisis Stabilization and what criterion indicates psychiatric hospitalization."

(b) Response: Section 2(1)(g) of the administrative regulation establishes that these services are "in order to . . . stabilize a crisis and divert an individual from a higher level of care." Inpatient hospital care would qualify as a higher level of care.

SUMMARY OF STATEMENT OF CONSIDERATION
AND
ACTION TAKEN BY PROMULGATING ADMINISTRATIVE BODY

The Department for Medicaid Services (DMS) has considered the comments received regarding 907 KAR 15:070 and is amending the administrative regulation as follows:

Page 4
Section 2(1)(j)
Line 1
After "(j)", insert the following:
Except as established in subsection (2)(a) of this section,

Page 4
Section 2(1)(k)
Line 2
After "(k)", insert the following:
Except as established in subsection (2)(b) of this section,

Page 4
Section 2(2)
Line 17
After "(2)", insert the following:
If every recipient receiving services in the:
(a) Single unit is under the age of twenty-one (21) years or over the age of sixty-five (65) years, the limit of sixteen (16) beds established in subsection (1)(j) of this section shall not apply; or
(b) Multiple units is under the age of twenty-one (21) years or over the age of sixty-five (65) years, the limit of sixteen (16) beds established in subsection (1)(k) of this section shall not apply.
(3)

Page 6
Section 3(2)(b)11.
Lines 5 and 6
After "supervision", delete the following:
except for a certified alcohol and drug counselor

Page 7
Section 3(2)(c)11.
Lines 18 and 19
After "supervision", delete the following:
except for a certified alcohol and drug counselor

Page 8

*Section 3(2)(f)1.j.
Lines 1 to 3
After “for a”, delete the following:
:
(i) Certified alcohol and drug counselor; or
(ii)
**Note to Regulations Compiler: As filed this clause was number “o.”, but was corrected to “j.” by the Regulations Compiler via a technical amendment.*

Page 8
Section 3(2)(f)2.
Line 5
After “of”, insert a colon, a return, and “a.”

After “provider”, insert the following:
; or
b. A certified alcohol and drug counselor

Page 13
Section 3(3)(g)2.b.
Line 9
After “provider”, insert the following:
or certified alcohol and drug counselor

Page 13
Section 3(4) and (5)
Lines 15 to 19
After “(4)”, remove the remainder of subsection (4) in its entirety and delete the notation “(5)”.

Page 13
Section 3(6)
Line 21
Renumber this subsection by inserting “(5)” and by deleting “(6)”.

Page 14
Section 3(7)
Line 1
Renumber this subsection by inserting “(6)” and by deleting “(7)”.